

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)
)
Plaintiff,) **ORDER**
)
vs.)
)
Michael L. Fisher, et. al.,) Case No. 1:08-cv-026
)
Defendants.)

On October 20, 2008, the Bluegrass Community and Technical College's records custodian filed a Motion to Amend Subpoena pursuant to Rule 45(c)(3)(ii) of the Federal Rules of Civil Procedure. The court shall construe this as a Motion to Quash pursuant to Rule 17(c)(2) of the Federal Rules of Criminal Procedure as this is a criminal matter and the rule cited by the records custodian is inapplicable.

The Government presumably intends to call the records custodian, who is not a party to this action, to establish foundation for records it will move to admit into evidence at trial. The parties may ultimately stipulate to foundation, obviating the need for the records custodian to appear at trial. However, in the absence of any such stipulation, the court is not inclined to quash the Government's subpoena. The records custodian's motion (Docket No. 63) is therefore **DENIED** without prejudice.

IT IS SO ORDERED.

Dated this 22nd day of October, 2008.

/s/ Charles S. Miller, Jr.

Charles S. Miller, Jr.

United States Magistrate Judge